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Practitioner's Docket No.: 1372.17

PATENTS

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Mark J. Jaroszeski et al. )

Serial No.: 09/772,561 )

Art Unit: 3763

Filed: 01/30/2001 )

Examiner: Michael J. Hayes

For: **NONPENETRATING  
ELECTROPORATION DEVICE AND  
METHOD** )

Faxed to Technology Center 1700 at (703) 872-9302  
Box Non-Fee Amendment  
Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

Applicant responds to the Examiner's action mailed February 28, 2003, having a shortened statutory period for response set to expire March 28, 2003 as follows:

RESPONSE TO ELECTION/RESTRICTION REQUIREMENT

Applicant's reply filed on 12/20/02 was not fully responsive to the prior Office Action because of the following omission: In Paper No. 10, Applicant was required to make an election between various species as well as the election between invention groups. Applicant elected one invention group but did not elect a single species.

Applicant responds by electing the species classified by the Office as "species 6", relating to Fig. 10 and Fig. 11. As such, Applicant requests prosecution on the merits for the claims readable on the elected species, which includes claims 1, 3, 13, 28, 33 and 61.

REMARKS

Applicant's traverses the finding of the office that no claim is currently generic. Citing 37 CFR 1.141:

Two or more independent and distinct inventions may not be claimed in one national application, except that more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the

application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form or otherwise include all the limitations of the generic claim.

Applicant believes that Claim 1 of the present invention is a generic claim to all the claimed species and that all the claims to the identified species in excess of one are written in dependent form and include all the limitations of generic Claim 1.

Additionally, the Office contends that the application contains claims directed to 21 distinct species of the claimed invention. However, the Office has classified all of the claims reading on the identified species, 1-21, as belonging to class 604, subclass 20. As such, Applicant believes that the application discloses and claims various alternative embodiments of the invention, all of which exist within the same classification and therefore it would not be considered unreasonable or unduly burdensome for the Examiner to examine each of the disclosed and claimed species in the application as filed.

For the reasons cited above, Applicant should be entitled to consideration of claims to the additional identified species not elected at this time.

If an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested.

Very respectfully,

SMITH & HOPEN

By: Molly Sauter  
Molly Sauter  
Suite 220  
15950 Bay Vista Drive  
Clearwater, FL 33760  
(727) 507-8558  
Attorneys for Applicant

Dated: March 28, 2003

Docket No. 1372.17

**PATENTS****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of:

MARK J. JAROSZEWSKI ET AL.

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*MAR 28 2003*  
*GROUP 3700*

**AMENDMENT TRANSMITTAL**

- Transmitted herewith is a Response To Election/Restriction Requirement for this application.

**STATUS**

- Applicant is an independent inventor. A statement was already filed.

**EXTENSION OF TERM**

- The proceedings herein are for a patent application and the provisions of 37 C.F.R. 1.136 apply.  
 Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition for extension of time.

*Molly L. Sauter*  
**SIGNATURE OF PRACTITIONER**  
 Molly L. Sauter  
 Smith & Hopen, P.A.  
 15950 Bay Vista Drive, Ste. 220  
 Clearwater, FL 33760  
 (727) 507-8558

Reg. No.: 46,457  
 Customer No.: 21,901

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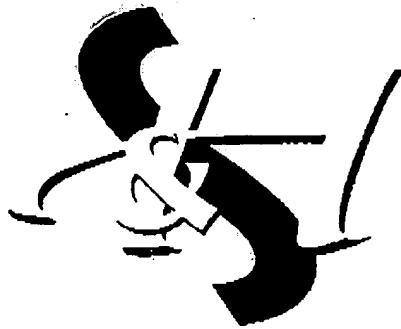
**CERTIFICATE OF FACSIMILE TRANSMISSION**  
 (37 C.F.R. 1.8(a))

I HEREBY CERTIFY that this correspondence is being transmitted by facsimile to the U.S. Patent and Trademark Office, Group Art Unit 3763, Attn: Michael J. Hayes, (703) 872-9302 on March 28, 2003.

Dated: March 28, 2003

*Molly L. Sauter*

(Amendment Transmittal—page 1)



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## Fax INTELLECTUAL PROPERTY LAW

To: U.S. Patent & Trademark Office From: Molly L Sauter  
Attn: Michael J. Hayes - Art Unit 3763 Client: 1372.17  
Fax: (703)872-9302 Pages: 4 including coversheet  
Phone: (703)305-5873 Date: March 28, 2003  
Re: USSN 09/772,561 CC: University of South Florida (Assignee)

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